

## **Senate Bill No. 1480**

### **CHAPTER 296**

An act to amend Sections 23055, 23357.2, 23358.3, 23366.3, 23399.4, 24044.5, 24045.11, 25503.15, and 25505 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 23, 2010. Filed with  
Secretary of State September 24, 2010.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 1480, Committee on Governmental Organization. Alcoholic beverages: tied-house restrictions: operating permits.

(1) Under existing law, the Alcoholic Beverage Control Act is administered by the Department of Alcoholic Beverage Control. Existing law requires the director of the department to make an annual report to the Legislature on the department's activities, which includes recommendations for legislation to improve the department's abilities to administer the act.

This bill would revise the report requirements to no longer include legislative recommendations.

(2) The Alcoholic Beverage Control Act provides for the issuance of licenses for which various annual fees are charged depending upon the type of license issued. Existing law authorizes the Department of Alcoholic Beverage Control to annually adjust the fees charged commencing with the 2010 calendar year by an amount not to exceed an inflation factor based on the Consumer Price Index.

This bill would make technical, nonsubstantive changes to reflect existing law.

(3) Existing provisions of the Alcoholic Beverage Control Act, known as "tied-house" restrictions, generally prohibit a winegrower from having an ownership interest in an on-sale alcoholic beverage license, with limited exceptions. Among other exemptions, existing law exempts from the tied-house restrictions any licensed winegrower who meets specified conditions and any on-sale licensee that holds any ownership or interest in a winegrower, including that the winegrower or on-sale licensee, or his or her officer, director, or agent, enters into an undertaking, approved by the Department of Alcoholic Beverage Control, that makes specified statements regarding the sale or furnishing of wine by the winegrower, or any officer, director, or agent of the winegrower.

This bill would retain the requirement that the winegrower or on-sale licensee, or officer, director, or agent meet the specified conditions regarding the sale or furnishing of wine under the circumstances described above, but would eliminate the requirement that statements describing these conditions be made pursuant to an undertaking approved by the department.

(4) Existing law authorizes the Department of Alcoholic Beverage Control, in its discretion, to issue an interim retail permit to an applicant for any retail license to operate the premises during the period an application for a license at the premises is pending, subject to specified conditions.

This bill would revise the authorization of the Department of Alcoholic Beverage Control to, in its discretion, issue an interim operating permit to an applicant for any license to operate the premises during the period an application for a license at the premises is pending, subject to specified conditions applicable to all licensees or retail licensees only.

(5) The Alcoholic Beverage Control Act provides that a violation of any of its provisions for which another penalty or punishment is not specifically provided is a misdemeanor. This bill would expand existing crimes by imposing additional duties on a licensee under the act, thus, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 23055 of the Business and Professions Code is amended to read:

23055. On or before March 1 of each year, the director shall prepare and submit to the Legislature an annual report on the department's activities. The report shall include, but not be limited to, the following information for the previous calendar year:

(a) The amount of funds allocated and spent by the department for licensing, enforcement, and administration.

(b) The number of licenses issued, renewed, denied, suspended, and revoked, by license category.

(c) The average time for processing license applications, by license category.

(d) The number and type of enforcement activities conducted by the department and by local law enforcement agencies in conjunction with the department.

(e) The number, type, and amount of penalties, fines, and other disciplinary actions taken by the department.

SEC. 2. Section 23357.2 of the Business and Professions Code is amended to read:

23357.2. (a) An out-of-state beer manufacturer's certificate may be issued by the department upon the written undertaking and agreement by the applicant:

(1) That it and its agents and all agencies within this state controlled by it shall comply with all laws of this state and all rules of the department

with respect to the sale of alcoholic beverages, including, but not limited to, Chapter 12 (commencing with Section 25000) of Division 9, and Section 25509, to the same extent as licensees.

(2) That it shall make available, both in California and outside the state, for inspection and copying by the department, all books, documents, and records, located both within and without this state, which are pertinent to the activities of the applicant, its agents and agencies within this state controlled by it, in connection with the sale and distribution of its products within this state.

(b) The department may suspend or revoke an out-of-state beer manufacturer's certificate for cause in the manner provided for the suspension or revocation of licenses, and after a hearing which shall be held in the City of Sacramento or in any other county seat in this state as the department determines to be convenient to the holder of an out-of-state certificate.

(c) The annual fees for an out-of-state beer manufacturer's certificate shall be fifty-four dollars (\$54) for certificates issued during the 2002 calendar year, fifty-seven dollars (\$57) for certificates issued during the 2003 calendar year, sixty dollars (\$60) for certificates issued during the 2004 calendar year, and for certificates issued during the years thereafter, the annual fee shall be calculated pursuant to subdivisions (c) and (d) of Section 23320.

(d) All money collected from the fees provided for in this section shall be deposited in the Alcohol Beverage Control Fund as provided by Section 25761.

SEC. 3. Section 23358.3 of the Business and Professions Code is amended to read:

23358.3. A wine grape grower's storage license authorizes the holder to store bulk wine, made from grapes produced by the holder, on the premises of a licensed winegrower and to sell that wine, within this state, to winegrowers, distilled spirits manufacturers, brandy manufacturers, wine blenders, and vinegar producers.

The annual fee for a wine grape grower's storage license shall be sixty dollars (\$60) for licenses issued during the 2002 calendar year, sixty-four dollars (\$64) for licenses issued during the 2003 calendar year, sixty-seven dollars (\$67) for licenses issued during the 2004 calendar year, and for licenses issued during the years thereafter, the annual fee shall be calculated pursuant to subdivisions (c) and (d) of Section 23320.

SEC. 4. Section 23366.3 of the Business and Professions Code is amended to read:

23366.3. (a) An out-of-state distilled spirits shipper's certificate may be issued by the department upon the written undertaking and agreement by the applicant:

(1) That it and its agents and all agencies within this state controlled by it shall comply with all laws of this state and all rules of the department with respect to the sale of alcoholic beverages;

(2) That it shall make available, both in California and outside the state, for inspection and copying by the department, all books, documents, and records, located both within and without the state, which are pertinent to the activities of the applicant, its agents and agencies within this state controlled by it, in connection with the sale and distribution of its products within this state.

(b) The department may suspend or revoke an out-of-state distilled spirits shipper's certificate for cause in the manner provided for the suspension and revocation of licenses, and after a hearing which shall be held in the City of Sacramento or in such other county seat in the state as the department determines to be convenient to the holder of an out-of-state distilled spirits shipper's certificate.

(c) The annual fees for an out-of-state distilled spirits shipper's certificate shall be fifty-four dollars (\$54) for certificates issued during the 2002 calendar year, fifty-seven dollars (\$57) for certificates issued during the 2003 calendar year, sixty dollars (\$60) for certificates issued during the 2004 calendar year, and for certificates issued during the years thereafter, the annual fee shall be calculated pursuant to subdivisions (c) and (d) of Section 23320.

(d) All money collected from the fees provided for in this section shall be deposited in the Alcohol Beverage Control Fund, as provided by Section 25761.

SEC. 5. Section 23399.4 of the Business and Professions Code is amended to read:

23399.4. (a) A licensee under a winegrower's license may apply to the department for a certified farmers' market sales permit. A certified farmers' market sales permit shall authorize the licensee, a member of the licensee's family, or an employee of the licensee to sell wine produced and bottled by the winegrower entirely from grapes grown by the winegrower at a certified farmers' market at any place in the state approved by the department. The permit may be issued for up to 12 months but shall not be valid for more than one day a week at any single specified certified farmers' market location. A winegrower may hold more than one certified farmers' market sales permit. The department shall notify the city, county, or city and county and applicable law enforcement agency where the certified farmers' market is to be held of the issuance of the permit. A "certified farmers' market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code, and the regulations adopted pursuant thereto.

(b) The licensed winegrower eligible for the certified farmers' market sales permit shall not sell more than 5,000 gallons of wine annually pursuant to all certified farmers' market sales permits held by any single winegrower. The licensed winegrower shall report total certified farmers' market wine sales to the department on an annual basis. The report may be included within the annual report of production submitted to the department, or pursuant to any regulation as may be prescribed by the department.

(c) The fee for any permit issued pursuant to this section shall be forty-four dollars (\$44) for permits issued during the 2002 calendar year, forty-seven dollars (\$47) for permits issued during the 2003 calendar year, fifty dollars (\$50) for permits issued during the 2004 calendar year, and for permits issued during the years thereafter, the annual fee shall be calculated pursuant to subdivisions (c) and (d) of Section 23320.

(d) All money collected as fees pursuant to this section shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

SEC. 6. Section 24044.5 of the Business and Professions Code is amended to read:

24044.5. (a) The department, in its discretion, may issue an interim operating permit to an applicant for any license to operate the premises during the period an application for a license at the premises is pending and when all of the following conditions exist:

(1) The application has been protested pursuant to Article 3 (commencing with Section 24011).

(2) The department has made a determination based upon its investigation that the license should be issued.

(3) The applicant for the interim operating permit has filed with the department an application for issuance of a license at the premises to himself or herself.

(4) The application for the interim operating permit is accompanied by a fee of one hundred dollars (\$100).

(b) An interim operating permit issued by the department pursuant to this section shall be for a period not to exceed 120 days. An interim operating permit may be extended at the discretion of the department for additional 120-day periods as necessary upon payment of an additional fee of one hundred dollars (\$100) and upon compliance with all conditions required by this section. Any interim operating permit issued by the department shall be automatically canceled when a final determination made by the department regarding the protests becomes effective or when the application for the license is withdrawn, whichever occurs first. An interim operating permit is a conditional permit and authorizes the holder to whom issued to exercise the rights and privileges of the license for which the application has been filed with the department. Any conditions for which the applicant has petitioned pursuant to Article 1.5 (commencing with Section 23800) of Chapter 5 shall apply to any interim operating permit issued by the department.

(c) Purchase of beer and wine by the holder of an interim operating permit issued to an applicant for a retail license shall be made only upon payment before or at the time of delivery in currency or by check. Purchase of distilled spirits by the holder of an interim operating permit issued to an applicant for a retail license shall be made only upon payment before or at the time of delivery in currency or by certified check. However, the holder of an interim operating permit issued to an applicant for a retail license, who also holds one or more retail licenses and is operating under the retail license or licenses in addition to the interim operating permit, and who is not delinquent

under the provisions of Section 25509 as to any retail license under which he or she operates, may purchase alcoholic beverages on credit under the interim operating permit.

(d) All checks received by a seller for beer or wine purchased by the holder of an interim operating permit issued to an applicant for a retail license shall be deposited not later than the second business day following the date the beer or wine is delivered.

A check dishonored on presentation shall not be deemed payment. The receipt by the seller or his or her agent in good faith from a holder of an interim operating permit of a check dishonored on presentation shall not be cause for disciplinary action against the seller.

(e) Issuance of the license for which the holder of an interim operating permit issued to an applicant for a retail license has filed an application shall not be approved by the department until the holder of the interim operating permit has filed with the department a statement executed under penalty of perjury that all current obligations have been discharged, and that all outstanding checks issued by him or her in payment for alcoholic beverages will be honored on presentation.

(f) It shall not be a violation of this section or grounds for disciplinary action for any licensee to extend credit to the holder of an interim operating permit issued to an applicant for a retail license or to receive payment from the holder of an interim operating permit in a manner other than authorized herein unless the seller has knowledge of the fact that the purchaser was operating under an interim operating permit. Knowledge of the fact may be established by evidence, including, but not limited to, evidence that, at the time of receipt of payment or the extension of credit, the premises operated under an interim operating permit were posted with the notice required by Section 23985, or the holder of the interim operating permit has recorded notice as required by Section 24073, or the holder of the interim operating permit has published notice as required by Section 23986, or the holder of the interim operating permit has recorded and published notice pursuant to Division 6 (commencing with Section 6101) of the Commercial Code.

(g) Refusal by the department to issue or extend an interim operating permit shall not entitle the applicant to petition for the permit pursuant to Section 24011, or to a hearing pursuant to Section 24012. Articles 2 (commencing with Section 23985) and 3 (commencing with Section 24011) shall not apply to interim operating permits.

(h) Notwithstanding any other provision of law, the department may, in its discretion, cancel or suspend summarily at any time an interim operating permit if the department determines that good cause for the cancellation or suspension exists. Chapter 8 (commencing with Section 24300) shall not apply to interim operating permits.

(i) Application for an interim operating permit shall be on any form the department shall prescribe. If an application for an interim operating permit is withdrawn before issuance or is refused by the department, the fee that accompanied the application shall be refunded in full, and Section 23959 shall not apply. Fees received by the department for issuance of interim

operating permits shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

SEC. 7. Section 24045.11 of the Business and Professions Code is amended to read:

24045.11. The department may issue a special on-sale wine license to an establishment licensed to do business as a bed and breakfast inn.

“Bed and breakfast inn,” as used in this section, means an establishment of 20 guestrooms or less, which provides overnight transient occupancy accommodations, which serves food only to its registered guests, which serves only a breakfast or similar early morning meal, and with respect to which the price of the food is included in the price of the overnight transient occupancy accommodation. For purposes of this section, “bed and breakfast inn” refers to an establishment as to which the predominant relationship between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. For purposes of this section, the existence of some other legal relationships as between some occupants and the owner or operator is immaterial.

An establishment holding a license under this section is authorized to serve wine purchased from a licensed winegrower or wine wholesaler only to registered guests of the establishment. Wine shall not be given away to guests but the price of the wine shall be included in the price of the overnight transient occupancy accommodation. Guests shall not be permitted to remove wine served in the establishment from the grounds.

The applicant for a license shall accompany the application with an original fee of fifty dollars (\$50) and shall pay an annual renewal fee of six dollars (\$6) for each guestroom in the establishment until December 31, 2004, and for each year thereafter the annual fee shall be calculated pursuant to subdivisions (c) and (d) of Section 23320.

SEC. 8. Section 25503.15 of the Business and Professions Code is amended to read:

25503.15. (a) Notwithstanding any other provision of this division, a winegrower who manufactures, produces, bottles, processes, imports, or sells wine only, or any officer, director, or agent of that person, may hold the ownership of any interest in any on-sale license, if both of the following conditions exist:

(1) Neither that person, nor any officer, director, or agent of that person, sells or furnishes to the holder of the license any wine, or permits the sale pursuant to that license of any wine, manufactured, produced, wholesaled, bottled, processed, imported, or sold by that person or that person’s principal for as long as that ownership continues.

(2) Neither that person, nor any officer, director, or agent of that person, enters into any collusive scheme, whereby he or she unfairly sells or promotes, in his or her on-sale businesses, the wine of another winegrower who manufactures, produces, bottles, processes, imports, or sells wine only, in return for his or her wine being unfairly sold or promoted in the on-sale businesses of that winegrower.

(b) Notwithstanding any other provision of this division, any licensed winegrower or any winegrower who has a wholesale license, or any officer, director, or agent of that person, may hold, directly or indirectly, the ownership of any interest in an on-sale license, provided that each of the following conditions is met:

(1) The on-sale licensed premises are licensed as a bona fide public eating place as defined in Section 23038, or as a bona fide bed and breakfast inn as defined in Section 24045.11.

(2) The on-sale licensed premises purchases all alcoholic beverages sold and served at the on-sale licensed premises only from California wholesale licensees, other than the licensed winegrower who has a wholesale license and an interest in an on-sale license, unless one of the following conditions is met:

(A) The wine purchased is produced or bottled by, or produced and packaged for, the same licensed winegrower that holds an interest in the on-sale license.

(B) The wine is produced or bottled by, and is purchased from, a licensed winegrower who sells no more than 125,000 gallons of wine per year for distribution in this state under all brands or trade names owned by that winegrower.

(C) The wine is purchased by an on-sale licensee in whose on-sale license a licensed winegrower holds an interest, provided that the winegrower sells no more than 125,000 gallons of wine per year for distribution in this state under all brands or trade names owned by that winegrower.

(3) The licensed winegrower and any officer, director, or agent of that person, whether individually or in the aggregate, do not sell and serve the wine products produced or bottled under any brand or trade name owned by that winegrower through more than two on-sale licensed premises in which any of them holds an ownership interest.

(4) The number of wine items by brand offered for sale by the on-sale licensed premises that are produced, bottled, processed, imported, or sold by the licensed winegrower or by any person holding any interest in the winegrower does not exceed 15 percent of the total wine items by brand listed and offered for sale in the licensed bona fide public eating place selling and serving that wine. This paragraph does not apply to a bona fide bed and breakfast inn.

(c) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exceptions established by this section to the general prohibition against tied interests must be limited to their express terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.



SEC. 9. Section 25505 of the Business and Professions Code is amended to read:

25505. No on-sale licensee, or any officer, director, employee, or agent of that licensee, shall hold any ownership or interest, directly or indirectly, in any manufacturer's, winegrower's, rectifier's, importer's, or wholesaler's license, the business conducted under that license, or the property used in the business.

The provisions of this section shall not apply to the holding by one person of a wholesaler's license and an on-sale license in a county with a population that does not exceed 15,000.

The provisions of this section shall not apply to the financial or representative relationship between a manufacturer, winegrower, manufacturer's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of that person, and, except as otherwise specified, a person holding only one of the following types of licenses:

- (a) On-sale general license for a bona fide club.
- (b) Club license (issued under Article 4 (commencing with Section 23425) of Chapter 3 of this division).
- (c) Veterans' club license (issued under Article 5 (commencing with Section 23450) of Chapter 3 of this division).
- (d) On-sale license for boats, trains, sleeping cars or airplanes, except as provided in subdivision (e), where the alcoholic beverages produced or sold by that manufacturer, winegrower, manufacturer's agent, rectifier, bottler, importer, or wholesaler or any officer, director, or agent of that person are not sold, furnished or given, directly or indirectly to the on-sale licensee.

The provisions of this section shall not prohibit the leasing of property by an on-sale licensee to a manufacturer, winegrower, rectifier, importer or wholesaler provided that the lease agreement is first approved by the department. The department shall approve the lease agreement unless it finds that the rent payable is not the fair rental value of the property or that the purpose of the lease is to violate any of the provisions of this chapter.

The provisions of this section shall not prohibit the holding of any ownership or interest by an on-sale licensee, or any officer, director, employee, or agent of any on-sale licensee, in any winegrower's license, which winegrower manufactures, produces, bottles, processes, imports, or sells wine only, or in the business conducted under any winegrower's license, provided the on-sale licensee, or the officer, director, employee, or agent thereof does not sell pursuant to that on-sale license any wine manufactured, produced, processed, imported, or sold by the licensed winegrower for so long as the holding of the ownership or interest continues.

- (e) Any and all of the licenses specifically enumerated, mentioned, or described in Section 25503.30, either singly or in combination.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of

Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O